

EXHIBIT G

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IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON AT SEATTLE

MICROSOFT CORPORATION, a) Case No.
Washington corporation,) 10-1823
)
Plaintiff,)
) VIDEOTAPE
-vs-) DEPOSITION OF:
)
MOTOROLA, INC., MOTOROLA) PROF. DR. THEO
MOBILITY, INC., and GENERAL) BODEWIG
INSTRUMENT CORPORATION,)
)
Defendants.)

TRANSCRIPT of the stenographic notes of the proceedings in the above-entitled matter, as taken by and before LINDA M. JORRITSMA, a Certified Court Reporter and Notary Public of the State of New Jersey, held at the office of QUINN EMANUEL URQUHART & SULLIVAN, LLP, 51 Madison Avenue, New York, New York, on Monday, July 1, 2013, commencing at 10:01 a.m.

Job No. CS1692638

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1 MR. CHROCZIEL: Peter Chrocziel,
2 Freshfields.

3 MR. BEER: Matthias Beer, Freshfields.

4 THE VIDEOGRAPHER: And at this time the
5 court reporter, Linda Jorritsma, will swear in the
6 witness.

7 THEO BODEWIG, residing at Emil Dittler Street 17,
8 81479 Munich, Germany, having been duly sworn by the
9 Notary Public, testified as follows:

10 EXAMINATION BY MR. PRICE:

11 Q. Professor Bodewig -- is that close
12 enough pronunciation?

13 A. That's good.

14 Q. You've been retained by -- by Microsoft
15 as an expert for this case?

16 A. Yes.

17 Q. And my understanding is that you're
18 comfortable speaking English?

19 A. Yes, I am.

20 Q. You don't feel you need a translator for
21 this deposition, do you?

22 A. No.

23 Q. All right. So have you had your
24 deposition taken before?

25 A. No.

1 the German court then relates only to the German
2 national patent or the German part of the European
3 patent.

4 Q. And so -- so would that mean that that
5 German judgment, then you could not go into another
6 European country and say we're entitled to an
7 injunction or we're entitled to a royalty rate?

8 A. No. There's no binding effect of one
9 European court -- one national European court for
10 another national European court.

11 Q. So given that, do you have an
12 understanding as to why so many patent cases
13 are -- are filed in Germany?

14 A. One of the reasons -- we have talked
15 about three reasons before. And one of the reasons
16 may be that Germany is the biggest market in Germany,
17 and if you have an injunction gotten in Germany, then
18 you have covered a lot of the European Union already
19 therefore. And also another reason may be that
20 decisions of the German courts are not binding on
21 other courts but they may have some authority in
22 other courts.

23 Q. I think you said that one of the reasons
24 may be that Germany is the biggest market in Germany;
25 you probably meant the biggest market in Europe.

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1 A. Yes.

2 Q. Okay.

3 So you've heard of the concept, a
4 willing licensee?

5 A. Yes.

6 Q. So prior to being hired for this case,
7 did you have any expertise as to what a -- a willing
8 licensee was in -- in the context of FRAND?

9 A. No.

10 Q. Okay. After being hired for this case,
11 did you do any -- any research to determine what the
12 term, quote, willing licensee, close quote, meant in
13 connection with FRAND?

14 A. I have read the press releases by the
15 European Commission and the question-and-answer part
16 they published and where the term "willing licensee"
17 plays a role.

18 Q. Okay. So other than reading press
19 releases by the European Commission and the
20 question-and-answer part they published where the
21 term "willing licensee" plays a role, have you done
22 any other research to determine what the term, quote,
23 willing licensee means in connection with FRAND?

24 A. No.

25 Q. Now, the -- the press releases by the

1 European Commission, is it your understanding that
2 those press releases are final positions of
3 the -- the final position of the European Commission?

4 A. No.

5 Q. Is it your understanding that
6 those -- the question-and-answer parts that the
7 European Commission published, that -- that those are
8 final positions of the European Commission?

9 A. No.

10 Q. Has the European Commission issued
11 any -- a final position with respect to what a
12 willing licensee is in connection with FRAND?

13 A. Not as far as I know.

14 Q. Do you know of any other governing body
15 or -- or court that has done so?

16 A. No.

17 Q. Now, in this case, were you asked to
18 assume that Microsoft was a willing licensee under
19 FRAND?

20 A. I was not asked to assume that. I was
21 given the information what Microsoft had done, that
22 they had offered a license -- a license agreement and
23 so on, yes.

24 Q. Well, I guess, thinking back on your
25 background, I think you've told me you've really

1 never been hired as an expert before.

2 A. Um-hum.

3 Q. Is that right?

4 A. Yes.

5 Q. Did you ever learn that sometimes
6 experts can be asked to assume things and then say,
7 you know, well, if that's true, what would result
8 from that?

9 A. Um-hum, yes.

10 Q. You're aware of that?

11 Were there any facts in this case that
12 you were asked to assume so that you could reach your
13 expert opinion?

14 A. Not that I can remember now, no.

15 Q. Okay. So are -- are you giving an
16 expert opinion in this case that Microsoft is a
17 willing licensee? Is that your expert opinion?

18 A. My -- well, Microsoft has -- has told me
19 that they are willing licensees, that they are
20 willing to -- to get into a contract with a FRAND
21 license, yes.

22 Q. Okay. Well, you just told me Microsoft
23 has told you that they're a willing licensee.

24 A. Right.

25 Q. So if -- if -- if you'd been hired by

1 Motorola and Motorola had told you Microsoft was not
2 a willing licensee, would you give an expert opinion
3 that Microsoft was not a willing licensee?

4 MR. CEDEROTH: Objection to form.

5 A. Could you rephrase the question?

6 Q. Sure. You said Microsoft told you
7 they're a willing licensee.

8 A. Yes.

9 Q. And therefore, you've reached an expert
10 opinion that they're a willing licensee.

11 A. Yes.

12 Q. Right?

13 A. Not only because of that, because
14 Microsoft also gave me the license contract they had
15 offered to Motorola. So this is kind of proof to me
16 that they are willing to -- to get a license, and
17 they are willing to be a licensee, yes.

18 Q. So is -- let me step back then and
19 say -- okay. So what is your definition that you're
20 using when you give the expert opinion that Microsoft
21 is a willing licensee?

22 A. A willing licensee is somebody, in my
23 definition, who is willing to get into a -- into a
24 license agreement, is willing to negotiate about a
25 license agreement.

1 licensee in this case."

2 A. Yes.

3 Q. And you said that meant Microsoft was
4 willing to negotiate with Motorola. Remember that?

5 A. Yes.

6 MR. CEDEROTH: Object as to form. It
7 misstates the testimony.

8 Q. Now you said once there are
9 negotiations, then you then have to ask the question,
10 is Microsoft willing to accept a FRAND rate. Do you
11 recall that?

12 A. Yes.

13 Q. Okay. When you say, "Microsoft is a
14 willing licensee in this case," when you make that
15 conclusion on page 13, are you also
16 saying -- intending to say that they were willing to
17 accept a FRAND rate, or is that a second step?

18 A. From -- well, I -- I can only say what
19 Microsoft had offered in -- in its license
20 agree -- the offered license agreement. But I cannot
21 testify as an expert that this is the complete FRAND
22 rate because I do not do the -- cannot do the
23 calculations and so on.

24 Q. And so all that you're saying in your
25 expert report when you say, "Microsoft is a willing

1 licensee in this case," is that you, having looked at
2 the evidence found evidence that Microsoft was
3 willing to negotiate.

4 A. Yes.

5 Q. And is there anything unique to your
6 expertise that -- that could lead you to conclude
7 Microsoft was willing to negotiate, whereas, someone
8 just looking at the papers wouldn't be able to tell
9 that?

10 A. I've seen the -- I've seen the offered
11 agreement.

12 Q. Okay. So -- so what you've looked at is
13 an offer from Microsoft.

14 A. Yes.

15 Q. More than one offer from Microsoft.
16 Correct?

17 A. Yes.

18 Q. Okay. And I'm -- I'm -- I guess what
19 I'm asking is do you need any particular expertise in
20 German law to determine whether or not those offers
21 mean that Microsoft is willing to negotiate?

22 A. No, I don't think that I need a special
23 expertise.

24 Q. Do you think you needed, really, any
25 expertise in German law to determine that?

1 A. No, I don't think so.

2 Q. Okay. So let's talk then about
3 the -- the evidence that you are referring to.

4 Could you refer me to what offers you're
5 talking about that led you to state in your report
6 that Microsoft is a willing licensee?

7 A. I can -- I cannot give you, by heart,
8 the dates when Microsoft offered what, and so on, but
9 I have seen the papers. I've seen the agreements
10 Microsoft had offered, and the amendments to that,
11 and so on. So they are in the list of the documents
12 I've -- I've seen.

13 Q. Okay.

14 A. Yeah.

15 Q. Well, can you look at your list and
16 maybe identify for me what you're talking about?

17 A. I cannot identify that, actually, from
18 the list here because I've read this and -- but I
19 haven't -- don't remember the -- the headings you
20 find in the list and which are related to these -- to
21 these documents.

22 Q. So sitting here today, can you tell me
23 at what time you believe Microsoft became a, quote,
24 willing licensee?

25 MR. CEDEROTH: Object as to form.

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1 Q. And if you don't understand,
2 I'll -- I'll -- let me rephrase that.

3 Do you have a general understanding of
4 the timeline of this case?

5 A. Yes.

6 Q. Okay. And do you have a general
7 understanding as to when Microsoft first sued
8 Motorola in this case?

9 A. Um-hum.

10 Q. Is that a "yes"?

11 A. Yes.

12 Q. That's one thing I forgot to say.
13 You've got to say "yes" or "no," instead of "um-hum"
14 or "um-um."

15 A. Actually, you did say that. It's my
16 fault.

17 Q. Actually, I don't think I did, but
18 that's something someone would tell you.

19 But in any event, so what's your
20 understanding as to when Microsoft first sued
21 Motorola in this case?

22 A. When it was?

23 Q. Yeah.

24 A. What, in -- was it 2010? In the end of
25 2010 or 2011. I don't remember the dates -- the

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1 represent to you that this lawsuit was filed -- the
2 lawsuit was filed in Germany on July 6, 2011. Do you
3 know when Microsoft made its Orange Book offer?

4 A. I don't remember that. I would have to
5 look it up.

6 Q. Okay. Do you have any opinion as
7 to -- as to why there was a certain length of time
8 from the time the complaint was filed in Germany and
9 the time Microsoft made an Orange Book offer?

10 A. I don't know why.

11 Q. Under German law, could Microsoft
12 have -- have sought a stay of the German proceedings
13 in light of the United States proceedings
14 that -- that we're dealing with now?

15 A. No.

16 Q. And why not?

17 A. Because the German -- German courts
18 would not be bound by any American decision, like it
19 is the other way around, and I can't -- can't think
20 of that a German court would stay the proceeding
21 before the German court because there is a United
22 States case pending.

23 Q. Do German courts sometimes stay cases as
24 a result of comity, C-O-M-I-T-Y?

25 A. I'm not aware of that.

1 Q. So given the explanation you've given us
2 about the Orange Book ruling and the two procedures,
3 it's correct that Microsoft could have avoided an
4 injunction if it had followed the second alternative
5 and placed into escrow an amount that Motorola
6 demanded. Correct?

7 A. Possible.

8 Q. Well, in your view, that's correct.

9 A. Yeah.

10 Q. Let me ask you if you would look at
11 Section 81 of your report -- paragraph 81, I'm sorry.

12 And in paragraph 81 you talk about the
13 Regional Court in Mannheim addressing the question of
14 whether Motorola's rejection of Microsoft's offer
15 constituted a blatant or obvious violation of
16 antitrust law. Do you see that?

17 A. Yes.

18 Q. All right. In that opinion, the Court
19 also addressed, though, other questions. Correct?

20 A. Yes.

21 Q. And it's -- do you remember how long the
22 opinion is?

23 A. Yeah. Quite some pages. I don't
24 exactly remember. Twenty pages, or something like
25 that.

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1 Q. And one of the things that the Court
2 found was that Microsoft was, in fact, infringing the
3 standard-essential patents. Correct?

4 A. Yes.

5 Q. On paragraph 104 of your report, you
6 talk about Motorola being able to enforce a decision
7 regarding injunctive relief even if there was a
8 temporary restraining order by the U.S. District
9 Court for the Western District of Washington in
10 Seattle. Do you see that?

11 A. Yes.

12 Q. And what you're saying there is that the
13 German courts, if Motorola had tried to enforce an
14 injunction, would not have given any deference to the
15 U.S. District Court.

16 A. Yes.

17 Q. What would have happened to Motorola if
18 it had defied the U.S. District Court's order?

19 A. In the United States?

20 Q. In the United States and attempted to
21 enforce an injunction.

22 A. I am not an expert on U.S. law.

23 Q. So you can't say one way or another
24 whether or not it would have been wise for Motorola
25 not to seek enforcement --

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1 A. Well, I know that there is something
2 like contempt of court in the United States --

3 MR. CEDEROTH: I object as to form.

4 Q. Yeah, you can't say -- let me ask it
5 again.

6 You can't say -- let me finish. You
7 can't say one way or another whether or not Motorola,
8 you know, would have been wise to seek an injunction
9 in -- in Germany in light of a U.S. District Court
10 decision that it could not do so?

11 MR. CEDEROTH: Same objection.

12 A. No.

13 Q. In paragraph 110 -- and actually I want
14 to refer you to paragraph 111. You say, "The
15 decision on relocating Microsoft's EMEA distribution
16 center in Germany" --

17 A. Excuse me. Where are you reading? 110?

18 Q. Sorry. It's page 23 and it's paragraph
19 111.

20 A. 111. Okay. Yeah.

21 Q. Yeah. You say, "The decision on
22 relocating Microsoft's EMEA distribution center in
23 Germany required considerable preparation beginning
24 in January/February 2012 in order to meet the
25 possible April 17 deadline."

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1 Do you see that?

2 A. Yes.

3 Q. Now, are you giving that opinion as an
4 expert?

5 A. No.

6 Q. Then why are you giving that opinion?

7 A. Because it's from the deposition of
8 Mr. Roberts here, and this is my -- I was -- in this
9 way I was informed to how the proceeding was for the
10 relocation. But I wasn't involved in the relocation,
11 or anything like that.

12 Q. Okay. I mean, can you give any expert
13 opinion on -- on why Microsoft relocated its German
14 facility?

15 A. Why they did that?

16 Q. Yes.

17 A. I can only say what -- what I have heard
18 from Microsoft why they did it. But it's not -- I
19 wasn't involved in this decision.

20 Q. And -- and you're not giving expert
21 opinion then.

22 A. No.

23 Q. Correct?

24 A. Yes.

25 Q. And then in Section 112,

1 there's -- there's a paragraph about the effect of
2 the U.S. District Court's decision and whether it can
3 be appealed and whether Motorola appealed. Again, is
4 this part of your expert opinion?

5 A. No, I wouldn't say it's part of my
6 expert opinion. It's part of my general
7 expert -- general knowledge of law.

8 Q. But Section 112 is not something on
9 which you were making an expert opinion in this case.

10 A. No.

11 Q. Correct?

12 A. Right.

13 Q. In your expert opinion, if you were a
14 defendant in an -- in a patent case and you wanted to
15 avoid an injunction, which of the Orange Book
16 alternatives would you choose?

17 MR. CEDEROTH: Object as to form.

18 A. That's a very hypothetical question. If
19 I were in a situation like that, it would depend on
20 the specifics of the case, or so -- which I would
21 recommend. And I'm not a lawyer, I'm not an attorney
22 advising clients in this respect, so I cannot say
23 what I in general would do.

24 Q. So do you have an opinion one way or
25 another which one of the two Orange Book alternatives

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1 is more likely to insulate the defendant from an
2 injunction?

3 A. No, I don't have an opinion on that.

4 Q. I always regret saying this after I say
5 it, but I don't think I have any other questions.

6 MR. CEDEROTH: I have one point of
7 clarification. I have to find it.

8 EXAMINATION BY MR. CEDEROTH:

9 Q. Doctor, do you have your expert report?

10 A. Um-hum.

11 Q. I call your attention to paragraph 37
12 and subsections of that.

13 A. Yeah.

14 Q. And in addition -- what exhibit was
15 this?

16 MR. PRICE: His report?

17 MR. CEDEROTH: No, the --

18 THE WITNESS: Six. This one?

19 MR. CEDEROTH: Yes. Let me start again
20 then.

21 MR. PRICE: Sure.

22 Q. Looking at paragraph 37 and the
23 subsections of -- of -- let me just start with
24 Exhibit 6.

25 Counsel asked you about Exhibit 6 which